

ORIGINAL

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12 Attorneys for Plaintiff
13 United States Surgical Corporation

14
15 IN THE UNITED STATES DISTRICT COURT FOR THE
16
17 NORTHERN DISTRICT OF CALIFORNIA

18 UNITED STATES SURGICAL CORPORATION,
19)
20)
21)
22)
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Plaintiff,

v.

ORIGIN MEDSYSTEMS, INC. and FREDERIC
H. MOLL,

Defendants.

FILED
MAY 27 2 39 PM '92
RICHARD W. WIERING
CLERK
U.S. DISTRICT COURT
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155 (15) (15)

C92 1892VRW
Case No. 1892VRW
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COMPLAINT FOR
PATENT INFRINGEMENT

Plaintiff, United States Surgical Corporation ("U.S. Surgical"), by its attorneys, Proskauer Rose Goetz & Mendelsohn, for its complaint against Origin Medsystems, Inc. ("Origin") and Frederic H. Moll ("Moll") alleges as follows:

Nature of the Action

1. This is an action for infringement arising under federal patent law, 35 U.S.C. §§ 271, et seq.

COMPLAINT FOR PATENT INFRINGEMENT

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1 6. U.S. Surgical seeks compensatory and punitive
2 damages, injunctive relief barring defendants from infringing the
3 '353 Patent, reasonable attorneys' fees, and costs.

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5 Jurisdiction and Venue

6 7. This Court has jurisdiction pursuant to 28 U.S.C. §§
7 1331 and 1338(a).

8 8. Venue is proper in this Court under 28 U.S.C. §§
9 1391(b), 1391(c) and 1400(a).

10
11 The Parties

12 9. Plaintiff U.S. Surgical is a Delaware corporation
13 with its principal place of business in Norwalk, Connecticut.

14
15 10. On information and belief, defendant Origin is a
16 wholly-owned subsidiary of Eli Lilly & Co. and is a Delaware
17 corporation with its principal place of business in San Carlos,
18 California. Origin is engaged in the business of developing
19 surgical instruments.

20 11. On information and belief, defendant Moll is an
21 individual residing in San Francisco, California. On information
22 and belief, Moll currently is the Vice President and Medical
23 Director of Origin.

24
25 The Facts

26 12. On May 26, 1992, the '353 Patent issued in the name
27 of U.S. Surgical, naming the inventor, David T. Green ("Green"),
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1 and covering a retracting tip trocar. U.S. Surgical, as Green's
2 assignee, is the sole owner of the entire right, title and
3 interest in and to the '353 Patent with the right to sue and
4 recover for past, present and future infringement thereof.

5
6 13. Since at least March 1, 1992, Origin has been
7 manufacturing and both Origin and Moll have been marketing a
8 retracting tip trocar that literally infringes several claims of
9 the '353 Patent. As such, defendant Origin, and its officer,
10 defendant Moll, have infringed and will continue to infringe the
11 '353 Patent.

12 **AS A FIRST CLAIM FOR RELIEF**
13 **(Patent Infringement**
14 **(Both Defendants)**

15 14. Plaintiff incorporates by reference as if fully set
16 forth the allegations contained in paragraphs 1 through 13.

17 15. Origin and Moll have infringed and will continue to
18 infringe the '353 Patent.

19 16. On information and belief, the continued
20 infringement of the '353 Patent was and is preconceived,
21 deliberate and willful, making this an exceptional case within the
22 meaning of 35 U.S.C. § 285.

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24 17. Origin and Moll, by infringing the '353 Patent, are
25 depriving U.S. Surgical of the value of its investment in the '353
26 Patent, gaining entry into the market based on misappropriated
27 technology, and damaging U.S. Surgical's relationships with its
28 customers and its reputation as a leading innovator in the market,

COMPLAINT FOR PATENT INFRINGEMENT

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 5,116,353
DATED : May 26, 1992
INVENTOR(S) : Green

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 5, line 9, after "arm" insert --88--; and
line 26, after "channel" insert --94--.

Column 6, line 4, after "spring" insert --188--; and
line 42, change "therwith" to --therewith--.

Column 10, line 21, after "cutting tip" insert --412--.

Claim 1, line 2, change "A" to --a--.

Claim 16, line 2, after "trocar" delete "tip",
after "in" insert --spaced--;
line 3, after "trocar" insert --tip--.

Claim 18, line 10, change "form" to --from--.

Signed and Sealed this

Nineteenth Day of October, 1993

Attest:



BRUCE LEHMAN

Attesting Officer

Commissioner of Patents and Trademarks

1 thereby causing and continuing to cause U.S. Surgical irreparable
2 harm for which it has no adequate remedy at law.

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4 **AS A SECOND CLAIM FOR RELIEF**
5 **(Inducement to Infringe a Patent)**
6 **(Defendant Moll)**

7 18. Plaintiff incorporates by reference as if fully set
8 forth the allegations contained in paragraphs 1 through 17.

9 19. Moll has actively induced and continues to actively
10 induce Origin to infringe U.S. Surgical's '353 Patent, causing and
11 continuing to cause U.S. Surgical irreparable harm for which it
12 has no adequate remedy at law.

13 20. On information and belief, the continued
14 infringement of the '353 Patent was and is preconceived,
15 deliberate and willful, making this an exceptional case within the
16 meaning of 35 U.S.C. § 285.

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18 **WHEREFORE**, plaintiff demands judgment in its favor and
19 against Origin and Moll:

20 (1) for injunctive relief barring continued
21 infringement of the '353 Patent by defendants Origin and Moll,
22 together with their respective officers, directors, licensees,
23 subsidiaries, affiliates, agents, servants, employees and
24 attorneys, and all persons acting in concert or participation with
25 any of them, as permitted by 35 U.S.C. § 283;
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1 (2) for damages, jointly and severally, to
2 compensate U.S. Surgical for the infringement of the '353 Patent,
3 as permitted by 35 U.S.C. § 284;

4 (3) for an assessment of treble damages against
5 defendants due to their deliberate and willful infringement of the
6 '353 Patent, as permitted by 35 U.S.C. § 284;

7 (4) for an award of attorney's fees, an assessment
8 of costs, and interest, as permitted by 35 U.S.C. § 285; and

9 (5) for such other and further relief as the Court
10 deems just and proper.
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13 Dated: San Francisco, California
14 May 27, 1992

15 PROSKAUER ROSE GOETZ & MENDELSON
16 Attorneys for Plaintiff

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18 By: 

19 ROBERT V. KUENZEL
20 A Member of the Firm
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